

Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 EB-11 COME-00 L-03 CIAE-00 INR-10

NSAE-00 RSC-01 AGR-20 DRC-01 /061 W

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R 211009Z NOV 73

FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC 0287

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E.O. 11652: N/A

TAGS: BDIS, TW

SUBJECT: OLD DOMINION DAIRY DISPUTE

REF: A. STATE 227316; B. TAIPEI 6880

SUMMARY: TAIPEI DISTRICT COURT DECISION IN OLD DOMINION/SINO-CANADIAN CASE COULD PUT OLD DOMINION OUT OF BUSINESS IN TAIWAN AND DISRUPT SUPPLY OF DAIRY PRODUCTS TO US FORCES HERE. AFTER REVIEW OF OD/SC CONTRACT AND US/ROC FCN TREATY, WE BELIEVE THAT LANGUAGE OF THE TWO DOCUMENTS CALLS FOR ARBITRATION TO PRECEDE LITIGATION, AND ARE LESS CONCERNED ABOUT POSSIBLE MOFA REACTION TO ASPECTS OF THE OD/SC CONTRACT. WE WOULD BE WILLING TO APPROACH MOFA FORMALLY ON BEHALF OF OLD DOMINION, BUT CONTINUE TO BELIEVE DEPT. SHOULD HAVE WRITTEN REQUEST FROM OLD DOMINION TO DO SO.
END SUMMARY

1. IN A JUDGMENT DATED DECEMBER 29, 1972, THE TAIPEI DISTRICT COURT STATED THAT OLD DOMINION SHOULD RETURN ALL RENTED PROPERTIES TO SINO-CANADIAN. IF THAT JUDGMENT IS SUSTAINED BY THE TAIWAN HIGH COURT (WHICH MAY HAND DOWN A DECISION AS SOON AS EARLY NEXT MONTH, ACCORDING TO OD'S ATTORNEY) AND THE SUPREME COURT, IT COULD PUT OLD DOMINION OUT OF BUSINESS IN TAIWAN AND DISRUPT SUPPLY OF DAIRY PRODUCTS TO US FORCES HERE.

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2. WE NOW HAVE COMPLETE COPY OF OLD DOMINION/SINO-CANADIAN CONTRACT. IT STATES THAT "ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION IN NEW YORK ..." THE US-ROC FCN TREATY STATES THAT "IN THE CASE OF ANY CONTROVERSY SUSCEPTIBLE OF SETTLEMENT BY ARBITRATION, WHICH... IS COVERED BY A WRITTEN AGREEMENT FOR ARBITRATION, SUCH AGREEMENT SHALL BE ACCORDED FULL FAITH AND CREDIT BY THE COURTS WITHIN THE TERRITORIES OF EACH HIGH CONTRACTING PARTY ..." ALTHOUGH OLD DOMINION ARGUED TO THE TAIPEI DISTRICT COURT THAT ITS DISPUTE WITH SINO-CANADIAN SHOULD BE TAKEN TO ARBITRATION RATHER THAN LITIGATION, THE COURT DECIDED OTHERWISE ON GROUNDS THAT THE ROC IS NOT A SIGNATORY TO THE CONVENTION ON INTERNATIONAL ARBITRATION.

3. THE LANGUAGE OF THE OD/SC CONTRACT CLEARLY REQUIRES THAT DISPUTES BE SUBMITTED TO ARBITRATION; AND WHILE THE LANGUAGE OF THE FCN TREATY IS LESS PRECISE, IT, TOO, AS APPLIED TO THE OD/SC CONTRACT, SEEMS TO CALL FOR ARBITRATION TO PRECEDE COURT ACTION. THEREFORE, IT WOULD SEEM COMPLETELY APPROPRIATE FOR THE EMBASSY TO APPROACH MOFA FORMALLY TO CALL THEIR ATTENTION TO THE LANGUAGE OF THE OD/SC CONTRACT AND THE FCN TREATY, EXPRESS OUR OPINION THAT THE CONTRACT AND THE TREATY REQUIRE ARBITRATION, AND REQUEST MOFA TO LOOK INTO THE MATTER.

4. IN REF B PARA 3, WE REFERRED TO POSSIBLE CONSEQUENCES OF AN APPROACH TO MOFA. AFTER SEEING THE LANGUAGE OF THE OD/SC CONTRACT, WHICH DESCRIBES THE 20 PERCENT PAYMENT AS PART OF THE RENTAL FOR LEASED PREMISES, WE ARE LESS CONCERNED ABOUT HAVING TO EXPLAIN THAT TO MOFA, ALTHOUGH MOFA'S REACTION CERTAINLY CANNOT BE PREDICTED AT THIS TIME. (IT IS POSSIBLE THAT MOFA IS ALREADY AWARE OF ALL PROVISIONS OF THE OD/SC TREATY.)

5. OUR VIEW NOW IS THAT EITHER COURSE OF ACTION--
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ALLOWING THE COURT PROCESS TO RUN ITS COURSE, OR ATTEMPTING TO GET THE DISPUTE SUBMITTED TO ARBITRATION--RUNS THE RISK OF OLD DOMINION BEING FORCED TO TERMINATE ITS OPERATIONS HERE.

6. WE CANNOT, OF COURSE, KNOW WHETHER OR NOT THE RESULT OF ARBITRATION WOULD BE MORE FAVORABLE TO OLD DOMINION THAN THE ULTIMATE JUDGMENT OF THE

CHINESE COURTS. HOWEVER, A DECISION AT THIS POINT TO SUBMIT THE CASE TO ARBITRATION WOULD PROBABLY DELAY A RESOLUTION OF THE CASE, POSSIBLY FOR A SIGNIFICANT PERIOD OF TIME. (WE HAVE NO BASIS ON WHICH TO ESTIMATE TIME INVOLVED IN ARBITRATION CASES.) AN APPROACH TO MOFA, AS DESCRIBED IN PARA 3 ABOVE, WOULD IN ITSELF LIKELY RESULT IN SOME DELAY IN THE JUDICIAL PROCEEDINGS EVEN IF THE CASE NEVER ENDS UP IN ARBITRATION.

7. WE NOW WOULD BE WILLING TO APPROACH MOFA (PER PARA 3 ABOVE) FORMALLY ON BEHALF OF OLD DOMINION IF THEY SO DESIRE. (T.C. HUANG, OD'S ATTORNEY, RECOMMENDS THIS LINE OF ACTION.) HOWEVER, WE REITERATE THAT IF OLD DOMINION DOES DECIDE TO GO AHEAD IN THIS MANNER, THEY SHOULD GIVE THE DEPARTMENT IN WRITING A STATEMENT THAT THEY UNDERSTAND RAMIFICATIONS AND WISH US TO SO PROCEED.

8. THE PRESENT EXTENSION OF THE USG/OLD DOMINION CONTRACT WILL TERMINATE IN DECEMBER 1974. THE CONTRACT COULD BE EXTENDED, FOR FINAL TIME, UNTIL JUNE 30, 1975 WITH SEC/ARMY APPROVAL. HOWEVER, TDC ANTICIPATED NO DESIRE TO EXTEND CONTRACT FOR FINAL SIX-MONTH PERIOD, AND THEREFORE EXPECTS THAT ARMY CONTRACTING AUTHORITIES WILL HAVE TO SOLICIT BIDS IN MID-1974 FOR SUPPLY OF DAIRY PRODUCTS IN PERIOD BEGINNING JANUARY 1975. THUS EVEN IF THE ULTIMATE RESOLUTION OF THE OLD DOMINION/SINO-CANADIAN DISPUTE GOES IN OLD DOMINION'S FAVOR, THEIR OPERATIONS ON TAIWAN MAY WELL HAVE TO TERMINATE AS OF DECEMBER 1974. MCCONAUGHY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 21 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: collinp0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973TAIPEI07026
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: TAIPEI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731119/aaaaanje.tel
Line Count: 146
Locator: TEXT ON-LINE
Office: ACTION EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: A. STATE 227316; B. TAIPEI 6880
Review Action: RELEASED, APPROVED
Review Authority: collinp0
Review Comment: n/a
Review Content Flags:
Review Date: 01 FEB 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01-Feb-2002 by martinjw>; APPROVED <07 MAR 2002 by collinp0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: OLD DOMINION DAIRY DISPUTE
TAGS: BDIS, TW
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005